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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1951.

No. 173

LEIF G. HANSEN,

Petitioner,

—against—

ARABIAN AMERICAN OIL COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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AUTHORITIES CITED:

Chicago Convention of December 7, 1944, Article 31.. 2, 8

Civil Aeronautics Authority Act of 1938, 49 U. S. C. A., Section 401, Paragraph (20), sub-paragraph (c) and (32) and Section 560 (a) 2, 4, 5, 7, 8

28 U. S. C., Section 1254 (1) 2

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Leif G. Hansen, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit entered in the above cause on April 3, 1952, affirming the order of the District Court for the Eastern District of New York dismissing the complaint on motion for summary judgment and from the judgment entered thereon, and respectfully represents:

The Opinions of the Courts Below.

The opinion of Galston, District Judge, appears in the record at pages 50 to 53 and the opinion of the

Court of Appeals for the Second Circuit appears in the record at page 59.

Jurisdiction.

(1) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

(2) The judgment of the Court of Appeals for the Second Circuit affirming the judgment of the District Court was entered on April 3, 1952, and judgment thereon entered in the United States District Court for the Eastern District of New York on June 11, 1952.

Statute and Treaty Involved.

The statute involved is the Civil Aeronautics Authority Act of 1938, 49 U. S. C. A., Section 401, Paragraph (20), sub-paragraph (c) and Paragraph (32) and Section 560(a).

The Treaty involved is the Chicago Convention of December 7, 1944, Article 31 thereof.

The pertinent parts of both are set forth in the appendix *infra*.

The Question Presented.

The sole question involved is whether under the contract the defendant-appellee could order the plaintiff-appellant to fly United States registered planes

which were not flown and maintained in conformity with the safety regulations of the Civil Aeronautics Authority of the United States.

Summary Statement of the Matter Involved.

The petitioner, Leif G. Hansen, was employed as an airplane pilot by the defendant-appellee, Arabian American Oil Company, pursuant to a written contract made in the State of New York and dated October 1, 1947, under the terms of which contract petitioner-appellant agreed to serve for a minimum period of thirty months in the zone of the company's operations abroad in Saudi Arabia, and the surrounding area.

It is conceded by the defendant-appellee that all of its aircraft were licensed by the Civil Aeronautics Authority of the United States Government (see page 4 of the defendant-appellee's moving affidavit which appears in the record at page 22). The petitioner-appellant alleged that the defendant-appellee failed to maintain the aircraft in accordance with the CAA rules and regulations and violated said rules and regulations on numerous occasions, particularly the safety regulations, and that when the petitioner-appellant complained of these violations and in particular of the fact that the Company had unlawfully caused a single engine rating to be added to his license, he was then given the option of quitting or being fired by his superiors.

Specification of Errors.

The Court of Appeals for the Second Circuit erred:

(1) In not reversing the judgment below and in not holding that the provisions of the Civil Aeronautics Authority Act of 1938 apply; (2) in affirming the judgment of the District Court.

Reasons Relied on for the Granting of the Writ.

The Court of Appeals, in its opinion, states as follows:

> ". . . The argument appears to be that, since Article 31 of the Convention of International Civil Aviation provided that all aircraft 'engaged in international navigation' must be provided with a 'certificate of air worthiness' issued by the state where it was 'registered,'* the contract in effect provided that all planes which the plaintiff was to be called upon to fly should have such certificates. We will assume *arguendo* that the contract did imply that all planes registered in the United States should carry the prescribed certificates; and we may still further assume that all planes, registered in any other state which was a party to the Convention of 1946, should carry certificates of airworthiness of that state. We do not see how that can be relevant, since Saudi Arabia was not a party to the Convention and no planes registered by it were obliged to carry any such certificate.

* Vol. 61, Part 2, p. 1189. St. at L.

> Be that as it may, the plaintiff does not assert that he was asked to fly any plane registered in the United States which did not have a U. S. certificate, or otherwise conform to U. S. regulations; nor does he assert that he was asked to fly any plane registered elsewhere which did not have its proper certificate. What he does assert is that he was asked to fly some unidentified planes which did not conform to the requirements for U. S. planes; and that argument presupposes that because the contract was executed in New York, it incorporated as a term that all planes which he could be called upon to fly, must meet the standards of the United States no matter where they were registered. . . ."

This is not a correct statement of the facts nor of the contentions of the petitioner-appellant as evidenced by the record. The Court assumes *arguendo* that the contract did imply that all planes registered in the United States should carry the prescribed certificates. In this connection, it is our understanding that the Civil Aeronautics Authority Act of 1938, 49 U. S. C. A., Section 560(a) (see appendix) requires that all planes registered in the United States must carry certificates of airworthiness and otherwise comply with the regulations of the Civil Aeronautics Authority Act. As we understand the Court, it says that conceding that point it does not see its relevancy, since Saudi Arabia was not a party to the Convention and no planes registered by it were obliged to carry any such certificate. As to this statement we have no comment, as under the conceded facts in this case there is no question involving any planes registered by Saudi Arabia. The Court, in its opinion, then

states that the plaintiff does not assert that he was asked to fly any plane registered in the United States which did not have the prescribed certificate or otherwise conform to United States regulations. This statement is directly contrary to the conceded facts of the case. It is conceded in the original moving affidavit of the defendant-appellee. (See pages 21 and 22 of the record.) There is no question here of flying some unidentified planes to which the Court refers. It is conceded throughout that all of the planes which the petitioner-appellant flew or was asked to fly were registered with the Civil Aeronautics Authority of the United States.

Plaintiff's argument on this point is simply that by registering its aircraft with the Civil Aeronautics Authority of the United States, defendant-appellee subjected itself to the Civil Aeronautics Authority Act and the rules and regulations of the Civil Aeronautics Authority of the United States. By so doing, it held out to the world and particularly to any American pilot flying the aircraft, that the aircraft were to be maintained and flown in accordance with the Civil Aeronautics Authority regulations of the United States, including the safety regulations and the airworthiness procedures of the Chicago Convention.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GUY O. WALSER,
Attorney for Petitioner.

SORENSON & MILLER,
Of Counsel.

APPENDIX.

Civil Aeronautics Authority Act of 1938
49 U. S. C. A.

SECTION 401, Paragraph (20)

"Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, . . .—

Sub-paragraph (c)

a place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

Paragraph (32) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.

SECTION 560

(a) It shall be unlawful—

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any person to serve in any capacity as an

airman in connection with any civil aircraft used in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of the terms of any such certificate;

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate; and

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Board or Administrator of Civil Aeronautics under this subchapter.

The Chicago Convention of December 7, 1944

Article 31

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Statement of Facts

Although the plaintiff resigned from the defendant's employment, the action is, in effect, one for wrongful discharge

The plaintiff was employed by the defendant under a written contract as a "co-pilot". The services of the plaintiff for the defendant were to be rendered in Saudi Arabia or other foreign locality.

The plaintiff relies wholly and solely on the written contract, a copy whereof is attached to the complaint. The complaint alleges that it was implied in said contract that the airplanes which the plaintiff would be asked to fly for the defendant would be flown and maintained in conformity with the safety regulations of the Civil Aeronautics Authority of the United States Government.

An inspection of the contract reveals that it does not contain any such implication.

The plaintiff was examined before trial by the defendant. Although the plaintiff relies wholly and solely on the written contract, the plaintiff was permitted on said examination before trial to testify concerning any oral representations which he claimed had been made to him before or at the time of the making of the contract concerning the maintenance of the airplanes which he would be asked to fly for the defendant. The plaintiff testified that the only representations which had been made to him were to the effect that the airplanes which he would be asked to fly would be licensed by the United States Government. The plaintiff further testified that the airplanes which he was asked by the defendant to fly were, in fact, licensed by the United States Government.

The defendant moved for summary judgment, setting forth the above facts.

Although the plaintiff in his petition for a writ of certiorari states that a treaty is involved, the plaintiff did not make any such claim in the District Court.

The District Court granted the motion of the defendant for summary judgment and entered judgment dismissing the complaint. The plaintiff appealed to the United States Court of Appeals for the Second Circuit and the judgment of the District Court was affirmed.

POINTS AND AUTHORITIES

POINT I

No statute is involved.

Although the petition for the writ of certiorari states that 49 U. S. C. A. 401 is involved, such is not the case. By the very terms of the statute which are quoted in the Appendix to the plaintiff's petition for a writ of certiorari, it appears that the statute insofar as the plaintiff relies thereon is not applicable. There is no allegation and no proof in the record of this case that the defendant is engaged in the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation in commerce between a place in the United States and any place outside thereof (Civil Aeronautics Authority Act of 1938 defining "interstate air commerce", "overseas air commerce" and "foreign air commerce", respectively). Since the defendant was not engaged in any type of commerce as defined by the Civil Aeronautics Authority Act of 1938, no section of said Act relied upon by the plaintiff can be applicable.

POINT II

No treaty is involved.

Although the petition for the writ of certiorari states that the Chicago Convention of December 7, 1944, Article 31, is involved, such is not the case. That portion of the Convention is quoted on page 8 of the petition and it appears from the quotation itself that the quotation is not applicable. The aircraft which the plaintiff was asked by

the defendant to fly were not engaged in "internation navi-
gation" which is the subject matter of the article that
treaty to which reference is made.

At all events, the Court of Appeals in its opinio elow
gave the complete answer to the argument based the
treaty referred to when it pointed out that Saudi A bia,
the place where the airplanes were to be and actuall vere
flown, is not a party to the treaty.

The Court of Appeals also pointed out significa y in
its opinion below that Section 1 of the treaty itself cog-
nizes the supremacy of the law of each of the signa ries
and *a fortiori* of Saudi Arabia which is not a signato .

POINT III

The decision below turns on its own facts; uld affect but few persons; and would be binding on on the parties hereto.

The facts involved in the case at bar are specia and
peculiar to the case itself. The case involves a quest n of
private contract only. The Courts below were called pon
to determine the single question whether or not it wa im-
plied in the contract sued upon that the airplanes hich
the plaintiff should fly should be flown and maintain in
conformity with the regulations of the Civil Aeron tics
Authority of the United States Government.

Until another contract identical with the one a bar
may become the subject of litigation, the holding in this
case cannot serve as a rule or guide for any other cas

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

LOUIS F. HUTTENLOCHER,
Attorney for Respondent.

THOMAS F. BARRY,
of Counsel.